



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 06 2012

Ref: 8P-AR

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite 301
Denver, CO 80202

Re: Freedom of Information Act Request 08-FOI-00148-12

Dear Mr. Nichols:

This is in response to your Freedom of Information Act (FOIA) request dated March 6, 2012 regarding EPA's final rule entitled, "Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze." Enclosed you will find four disks with copies of documents responsive to your request. The files are provided as pdfs, and attachments can be opened by double clicking on the document icon. Generally, we are not providing you with the documents located in the docket for our North Dakota regional haze action, as those documents are readily available to you at the www.regulations.gov website for docket number EPA-R08-OAR-2010-0406. However, there will probably be some duplication between the disks we are providing today and the docket on [regulations.gov](http://www.regulations.gov) due to the volume of records involved.

Some of the records you requested may contain trade secrets or commercial or financial information, which is exempt from disclosure under 5 U.S.C. 552(b)(4). Pursuant to 40 C.F.R. 2.204(d)(1), your request for such records is being initially denied because further inquiry by EPA is required before a final determination can be made. We will consult with the third parties in connection with their business confidentiality claims covering these records, and the EPA Region 8 Office of Regional Counsel will issue a final confidentiality determination. Also, we are unable to provide you with the documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. § 552(b)(5), the Attorney Client Privilege, 552(b)(5), the Attorney Work Product Privilege, 552(b)(5), the Deliberative Process Privilege, and 552(b)(6), Personal Privacy.

The attached table contains a categorical description of withholdings and a volume estimate.

You may appeal this partial response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue N.W. (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed

through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue N.W., Room 6416J, Washington, D.C. 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number referenced above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions concerning the enclosed information, please contact Gail Fallon at (303) 312-6281.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard M. Cantor", followed by a large, stylized flourish or loop.

Howard M. Cantor, for
Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance

Enclosures: Categorical Description of Withholdings and Volume Estimate
Four CDs Containing Releasable Information



Description of Withholdings and Volume Estimate

FOIA Exemption	No. of Documents¹	Description
5 U.S.C. § 552(b)(4) - Confidential Business Information	638	Vendor quotes, responses to CAA 114 information requests, and other records that have been claimed as or may contain confidential business information.
5 U.S.C. § 552(b)(5) – Attorney Client Privilege	4,825	Confidential attorney client communications, within EPA and between EPA and the Department of Justice, consisting of emails and memos, along with various attachments, such as drafts of letters, pleadings, rulemaking actions, briefing papers, and other materials.
5 U.S.C. § 552(b)(5) – Attorney Work Product Privilege	3,446	Emails, memos, draft pleadings, outlines, analyses, draft rulemaking documents, briefing papers and other documents prepared by an attorney, at an attorney's direction, or under an attorney's supervision.
5 U.S.C. § 552(b)(5) – Deliberative Process Privilege	7,898	Internal emails, memos, and communications, as well as drafts of various documents, including letters, pleadings, briefing documents, and rulemaking actions.
5 U.S.C. § 552(b)(6) – Personal Privacy	191	Confidential phone numbers, personal email addresses, and other personal information.

¹ Please note that more than one FOIA exemption may apply to some documents. The total volume of records we collected amounts to approximately 4.5 GB of data in Lotus Notes format (including 3,281 documents that we determined to be non-responsive) in addition to approximately 405 MB in pdf format. The total volume of records we are releasing amounts to approximately 1,120 MB of data in pdf format. While the pdf and Lotus Notes metrics are not directly comparable, this provides a general idea of the volume of material we are withholding.

